

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DITECH FINANCIAL , LLC,

Plaintiff(s),

v.

HOLLYWOOD HIGHLANDS EAST
 LANDSCAPE MAINTENANCE
 ASSOCIATION, INC., et al.,

Defendant(s).

Case No. 2:16-cv-00298-JAD-NJK

ORDER

(Docket Nos. 45-47)

Pending before the Court are SFR's motions to lift the stay, for an extension of time to serve Henry Diaz and Corina Diaz, and for leave to serve them by publication. Docket Nos. 45-47. The motions are properly resolved without a hearing. *See* Local Rule 78-1. For the reasons discussed below, the motions are **GRANTED**.

I. Motion to Lift the Stay

This case is currently stayed pending issuance of a mandate in *Bourne Valley Court Trust v. Wells Fargo Bank*. Docket No. 44. The Court finds sufficient cause to lift that stay for the sole purpose of effectuating service on Henry Diaz and Corina Diaz.

II. Motion to Extend Time for Service

Where good cause is shown, the time for serving the complaint is extended for an appropriate period. *See* Fed. R. Civ. P. 4(m). The motion establishes sufficient cause to extend the time for effectuating service on Henry Diaz and Corina Diaz by 60 days.

II. Motion for Leave to Serve by Publication

SFR seeks leave to serve Henry Diaz and Corina Diaz by publication. Service by publication implicates a defendant's fundamental due process rights. *See, e.g., Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950); *Price v. Dunn*, 787 P.2d 785, 787 (Nev. 1990). As a result, service by publication is generally disfavored. *See, e.g., Trustees of the Nev. Resort Assoc.—Int'l Alliance of Theatrical Stage Employees & Moving Picture Machine Operators v. Alumifax, Inc.*, 2013 U.S. Dist. Lexis. 106456, *2 (D. Nev. July 29, 2013).

The Federal Rules of Civil Procedure provide for service pursuant to the law of the state in which the district court is located, or in which service is made. *See, e.g., Fed. R. Civ. P. 4(e)(1)*. Pursuant to Rule 4 of the Nevada Rules of Civil Procedure, parties are generally required to personally serve summons and the complaint upon defendants. Nevada law also permits a party to obtain leave for service by publication when the opposing party, *inter alia* "cannot, after due diligence be found within the state, or by concealment seeks to avoid the service of summons." Nev. R. Civ. P. 4(e)(1). There are several factors courts consider to evaluate a party's due diligence, including the number of attempts made to serve the defendant at his residence and other methods of locating defendants, such as consulting public directories and family members. *See Price*, 787 P.2d at 786-87; *Abreu v. Gilmer*, 985 P.2d 746, 747 (Nev. 1999); *McNair v. Rivera*, 874 P.2d 1240, 1241 (Nev. 1994).

In this case, SFR has attempted to determine the whereabouts of Henry Diaz and Corina Diaz through, *inter alia*, public records searches, local and state directories, a national search engine, the Postal Service, and motor vehicle records. *See* Docket No. 46-1. SFR also attempted to reach Henry Diaz and Corina Diaz by telephone. *See id.* SFR has also attempted to serve Henry Diaz and Corina Diaz in both California and Nevada. *See id.* The Court finds these efforts sufficient to establish diligence, and permits service by publication.

III. Conclusion

Accordingly, the Court **GRANTS** the motions to lift the stay, to extend the deadline to effectuate service, and for service by publication. The stay in this case is lifted for the sole purpose of serving Henry Diaz and Corina Diaz. The deadline to serve Henry Diaz and Corina Diaz by publication is

1 extended by 60 days. SFR shall comply with the requirements of Nevada Rule of Civil Procedure 4 and
2 shall:

- 3 (a) Serve Henry Diaz and Corina Diaz by publication in a newspaper of general
4 circulation in the State of Nevada on a weekly basis for a period of four weeks.
5 (b) Serve Henry Diaz and Corina Diaz by publication in a newspaper of general
6 circulation in the State of California on a weekly basis for a period of four weeks.
7 (c) After publication is complete, SFR shall file an Affidavit of Publication.

8 IT IS SO ORDERED.

9 DATED: September 13, 2016

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12 NANCY J. KOPPE
13 United States Magistrate Judge
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